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**General Business Supply, d/b/a Tech Valley Printing, Inc. and Local 259-M, Graphics Communications Conference of the International Brotherhood of Teamsters.** Cases 3–CA–26517 and 3–CA–26585

May 30, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and an amended charge filed by the Union on December 12, 2007, and on February 13 and March 4, 2008, respectively, the General Counsel issued the consolidated complaint on March 6, 2008, against General Business Supply, d/b/a Tech Valley Printing, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On April 4, 2008, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 9, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment<sup>1</sup>

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that the answer must be received by the Regional Office on or before March 20, 2008, and that if no answer was filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. By letter dated March 25, 2008, counsel for the Respondent informed the Region that based upon the involuntary Chapter 7 bankruptcy case pending

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

against it, the Respondent was not in a position to answer the complaint.<sup>2</sup> To date, no answer has been filed.

In the absence of good cause being shown for the failure to file a timely answer,<sup>3</sup> we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business located in Watervliet, New York, herein called the Watervliet, New York facility, has been engaged in the business of commercial printing.

During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 259-M, Graphics Communications Conference of the International Brotherhood of Teamsters, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Smith held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All lithographic production employees employed by Respondent at its Watervliet, New York facility, ex-

<sup>2</sup> Although no further reminder was sent to the Respondent after service of the complaint, no such reminder was needed in light of the notification to the Region from the Respondent's counsel that the Respondent was not in a position to file an answer. Moreover, the failure to send a reminder letter does not warrant denial of a motion for default judgment. *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

<sup>3</sup> It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

cluding office clerical employees, guards and all professional employees and supervisors as defined in the Act and all other employees.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 1, 2006, through October 31, 2009 (the 2006–2009 agreement).

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about June 12, 2007, the Respondent has failed to remit to the Union the dues required by article 34, section 1 of the 2006–2009 agreement that the Respondent withheld from the unit employees' wages.

Since about June 12, 2007, the Respondent has failed to remit contributions to the Inter-Local Pension Fund as required by article 20, section 1 of the 2006–2009 agreement that the Respondent has withheld from the unit employees' wages.

Since about June 12, 2007, the Respondent has failed to make contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund as required by article 39, sections 1 through 4 and article 41, section 1 through 3 of the 2006–2009 agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

On or about September 17, 2007, the Union by letter, requested that the Respondent furnish the Union with the following information and renewed that request by letter dated November 1, 2007:

A list of all bargaining unit employees at Tech Valley Printing. This list needs to include the names, addresses, phone numbers and current job classifications of all bargaining unit employees.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about September 17, 2007, the Respondent has failed and refused to furnish the Union with the requested information.

On about February 8, 2008, the Respondent closed its Watervliet, New York facility. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining.

Since about February 8, 2008, the Respondent has failed and refused to bargain with the Union as the exclusive bargaining representative of the unit over the effects on the unit of its decision to close its Watervliet, New York facility.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its Watervliet, New York facility on February 8, 2008, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170

NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).<sup>4</sup>

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to close its facility on the unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations of its Watervliet, New York facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>5</sup>

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since June 12, 2007, to remit to the Union the dues that were deducted from employees' wages, as required by article 34, section 1 of the 2006–2009 agreement, we shall order the Respondent to forward the deducted dues to the Union as

required by the 2006–2009 agreement, with interest, as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing since June 12, 2007, to remit contributions to the Inter-Local Pension Fund that the Respondent withheld from employees' wages as required by article 20, section 1 of the 2006–2009 agreement, and by failing to make contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund, as required by article 39, sections 1 through 4 and article 41, sections 1 through 3 of the 2006–2009 agreement, we shall order the Respondent to remit such contributions to the Inter-Local Pension Fund, and to make whole its unit employees by making all such delinquent contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).<sup>6</sup> We shall also order the Respondent to reimburse the unit employees for any expenses ensuing from its failure to remit the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Also, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information requested on September 17 and November 1, 2007, we shall order the Respondent to provide the Union with the requested information.<sup>7</sup>

<sup>6</sup> To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

<sup>7</sup> In the remedy section of the consolidated complaint, the General Counsel seeks an order requiring that the Respondent post a notice to employees containing language acknowledging that the Respondent breached a prior informal settlement agreement in which the Respondent promised that it would not fail and refuse to furnish the Union with necessary and relevant information. However, the General Counsel has not provided any evidence that the informal settlement agreement was set aside in accordance with Sec. 101.9(e)(2) of the Board's Rules and Regulations. Accordingly, we shall require only the standard remedy for the failure to provide requested information that was alleged in the consolidated complaint.

<sup>4</sup> See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). Neither the complaint nor the motion specify the impact, if any, on the unit employees of the Respondent's decision to close. Thus, we do not know whether, or to what extent, the refusal to bargain about the effects of this decision had an impact on the unit employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving & Belting*, 340 NLRB 684, 685 fn. 3(2007); and *ACS Acquisition Corp.*, 339 NLRB 736, 737 fn. 2 (2003).

<sup>5</sup> In the consolidated complaint, the General Counsel "seeks an Order requiring that the Respondent pay interest on any back pay or other monetary awards on a compounded, quarterly basis." Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.*, 344 NLRB 504 (2005).

Finally, in view of the fact that the Respondent has closed its Watervliet, New York facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent since June 12, 2007, in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, General Business Supply, d/b/a Tech Valley Printing, Inc., Watervliet, New York, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 259-M, Graphics Communications Conference of the International Brotherhood of Teamsters, as exclusive collective-bargaining representative of the employees in the unit set forth below, over the effects of the Respondent's decision to close its Watervliet, New York facility on February 8, 2008:

All lithographic production employees employed by Respondent at its Watervliet, New York facility, excluding office clerical employees, guards and all professional employees and supervisors as defined in the Act and all other employees.

(b) Failing to remit to the Union dues that were deducted from employees' wages as required by article 34, section 1 of the 2006–2009 agreement.

(c) Failing to remit contributions to the Inter-Local Pension Fund that were withheld from employees' wages, as required by article 20, section 1 of the 2006–2009 agreement.

(d) Failing to make contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund, as required by article 39, sections 1 through 4 and article 41, sections 1 through 3 of the 2006–2009 agreement.

(e) Failing and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the unit.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to close its Watervliet, New York facility

on February 8, 2008, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(c) Remit to the Union all dues that have been deducted from employees' wages, as required by article 34, section 1 of the 2006–2009 agreement, that have not been remitted since June 12, 2007, with interest, in the manner set forth in the remedy section of this decision.

(d) Remit all contributions to the Inter-Local Pension Fund that were withheld from employees' wages, as required by article 20, section 1 of the 2006–2009 agreement that have not been remitted since June 12, 2007, with interest, in the manner set forth in the remedy section of this decision.

(e) Make all contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund that have not been made since June 12, 2007, with interest, in the manner set forth in the remedy section of this decision.

(f) Make whole the unit employees for any expenses ensuing from the Respondent's failure to remit the required contributions to the Inter-Local Pension Fund, and from the Respondent's failure to make the contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund since June 12, 2007, with interest, in the manner set forth in the remedy section of this decision.

(g) Furnish the Union with the information it requested on September 17 and November 1, 2007.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>8</sup> to the Union and to all unit employees who were employed by the Respondent at any time since June 12, 2007.

<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed By Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. May 30, 2008

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Peter C. Schaumber, Chairman

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Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 259-M, Graphics Communications Conference of the International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the unit set forth below, over the effects of our decision to close our Watervliet, New York facility on February 8, 2008:

All lithographic production employees employed by us at our Watervliet, New York facility, excluding office clerical employees, guards and all professional employees and supervisors as defined in the Act and all other employees.

WE WILL NOT fail to remit Union dues that were deducted from employees' wages as required by article 34, section 1 of the November 1, 2006, to October 31, 2009 collective-bargaining agreement.

WE WILL NOT fail to remit contributions to the Inter-Local Pension Fund that were withheld from employees' wages as required by article 20, section 1 of the 2006–2009 agreement.

WE WILL NOT fail to make contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund, as required by article 39, sections 1 through 4 and article 41, sections 1 through 3 of the 2006–2009 collective-bargaining agreement.

WE WILL NOT fail and refuse to furnish the Union information it requested on September 17 and November 1, 2007, that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to close our Watervliet, New York facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

WE WILL remit to the Union all dues that were deducted from employees' wages as required by article 34, section 1 of the 2006–2009 collective-bargaining agreement that have not been remitted since June 12, 2007, with interest.

WE WILL remit all contributions to the Inter-Local Pension Fund that were withheld from employees' wages, as required by article 20, section 1 of the 2006–2009 collective-bargaining agreement that have not been remitted since June 12, 2007, with interest.

WE WILL make all contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund that have not been made since June 12, 2007, with interest.

WE WILL make whole the unit employees for any expenses ensuing from our failure to remit the required contributions to the Inter-Local Pension Fund, and from our failure to make the contractually-required contributions to the Supplemental Retirement and Disability Fund and the GCIU Employer Retirement Fund since June 12, 2007, with interest.

WE WILL furnish the Union with the information it requested on September 17 and November 1, 2007.

GENERAL BUSINESS SUPPLY, D/B/A TECH VALLEY PRINTING, INC.



